

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Second
Amended Accusation Against:**

MARK LAWRENCE NAZARIAN, M.D.

Case No. 800-2016-025665

**Physician's and Surgeon's
Certificate No. G63835**

Respondent

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 2, 2019.

IT IS SO ORDERED July 3, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 SARAH J. JACOBS
Deputy Attorney General
4 State Bar No. 255899
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2312
Facsimile: (559) 445-5106
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Second Amended
Accusation Against:

14 **MARK LAWRENCE NAZARIAN, M.D.**
15 **1404 W. Norwich Ave, # 102**
16 **Fresno, CA 93705**

17 **Physician's and Surgeon's Certificate No. G**
63835

18 Respondent.

Case No. 800-2016-025665

OAH No. 2018060427

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Sarah J. Jacobs,
26 Deputy Attorney General.

27 \\\n28

1 2. Respondent Mark Lawrence Nazarian, M.D. (Respondent) is represented in this
2 proceeding by attorney Annie Duong, whose address is: 7647 N Fresno St, P.O. Box 28912,
3 Fresno, CA 93720.

4 3. On or about August 22, 1988, the Board issued Physician's and Surgeon's Certificate
5 No. G 63835 to Mark Lawrence Nazarian, M.D. (Respondent). The Physician's and Surgeon's
6 Certificate was in full force and effect at all times relevant to the charges brought in Second
7 Amended Accusation No. 800-2016-025665, and will expire on March 31, 2020, unless renewed.

8 JURISDICTION

9 4. Second Amended Accusation No. 800-2016-025665 was filed before the Board, and
10 is currently pending against Respondent. The original Accusation and all other statutorily
11 required documents were properly served on Respondent on May 14, 2018. Respondent timely
12 filed his Notice of Defense contesting the original Accusation. The Second Amended Accusation
13 was deemed controverted pursuant to Government Code section 11507.

14 5. A copy of Second Amended Accusation No. 800-2016-025665 is attached as exhibit
15 A and incorporated herein by reference.

16 ADVISEMENT AND WAIVERS

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Second Amended Accusation No. 800-2016-025665. Respondent has
19 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
20 Settlement and Disciplinary Order.

21 7. Respondent is fully aware of his legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
23 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
24 to the issuance of subpoenas to compel the attendance of witnesses and the production of
25 documents; the right to reconsideration and court review of an adverse decision; and all other
26 rights accorded by the California Administrative Procedure Act and other applicable laws.

27 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Second
3 Amended Accusation No. 800-2016-025665, if proven at a hearing, constitute cause for imposing
4 discipline upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Second Amended Accusation without the expense
6 and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a prima facie factual basis for the charges in the Second Amended Accusation, and that
8 Respondent hereby gives up his right to contest those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below.

12 CONTINGENCY

13 12. This stipulation shall be subject to approval by the Medical Board of California.
14 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
15 Board of California may communicate directly with the Board regarding this stipulation and
16 settlement, without notice to or participation by Respondent or his counsel. By signing the
17 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
18 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
19 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
20 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
21 action between the parties, and the Board shall not be disqualified from further action by having
22 considered this matter.

23 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
25 signatures thereto, shall have the same force and effect as the originals.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

DISCIPLINARY ORDER

1. **PUBLIC REPRIMAND.** Physician's and Surgeon's Certificate No. G 63835 issued to Respondent Mark Lawrence Nazarian, M.D. shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with the conduct as set forth in Second Amended Accusation No. 800-2016-025665.

2. **PROFESSIONALISM PROGRAM (ETHICS COURSE).** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. Failure to fully comply with the above terms and conditions of this Disciplinary Order shall constitute unprofessional conduct and will subject Respondent's Physician's and Surgeon's Certificate to further disciplinary action.

1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Annie Duong. I understand the stipulation and the effect it will
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: 2/27/19


MARK LAWRENCE NAZARIAN, M.D.
Respondent

10
11 I have read and fully discussed with Respondent Mark Lawrence Nazarian, M.D. the terms
12 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
13 Order. I approve its form and content.

14
15 DATED: 2/27/19


ANNIE DUONG
Attorney for Respondent

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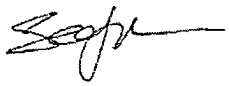
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order in the matter of Mark
Lawrence Nazarian, M.D., is hereby respectfully submitted for consideration by the Medical
Board of California.
Dated: 2/22/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General


SARAH J. JACOBS
Deputy Attorney General
Attorneys for Complainant

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95309917.docx

Exhibit A

Second Amended Accusation No.

800-2016-025665

CURRENTLY PENDING FILING

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 SARAH J. JACOBS
Deputy Attorney General
4 State Bar No. 255899
California Department of Justice
5 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
6 Telephone: (559) 705-2312
Facsimile: (559) 445-5106
7

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 4 20 19
BY Sarah J. Jacobs ANALYST

10
11 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13
14 In the Matter of the Second Amended
Accusation Against:

15 **MARK LAWRENCE NAZARIAN, M.D.**
16 **1404 W. Norwich Ave., Ste. 102**
Fresno, CA 93705

17 **Physician's and Surgeon's Certificate**
18 **No. G63835,**

19 Respondent.

Case No. 800-2016-025665

SECOND AMENDED ACCUSATION

20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely
23 in her official capacity as the Executive Director of the Medical Board of California, Department
24 of Consumer Affairs (Board).

25 2. On or about August 22, 1988, the Board issued Physician's and Surgeon's Certificate
26 No. G63835 to Mark Lawrence Nazarian, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on March 31, 2020, and unless renewed.

JURISDICTION

3. This Second Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code, states, in pertinent part:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
2 omissions. An initial negligent act or omission followed by a separate and distinct departure from
3 the applicable standard of care shall constitute repeated negligent acts.

4 “....”

5 6. Section 2726 of the Code states: “Except as otherwise provided herein, this
6 chapter [The Nursing Practice Act] confers no authority to practice medicine or surgery.”

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Repeated Negligent Acts)**

9 7. Respondent has subjected his Physician’s and Surgeon’s Certificate No.
10 G63835 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
11 subdivision (c), of the Code, in that respondent committed repeated acts of negligence in his care
12 and treatment of patients A and B.¹ The circumstances are as follows:

13 8. On or about October 1, 2004, S.K, a California licensed Chiropractor, formed a
14 professional corporation named, “First Health Medical Center of Fresno, Inc.,” (FHMC). The
15 primary place of business for FHMC² was 7161 N. Howard Street, Suite 100, Fresno, CA, 93720.

16 9. On or about March 1, 2007, FHMC began to transact business under the fictitious
17 business names of, “Mystique Medical Spa and Wellness Center of Fresno Inc.,” “Mystique
18 Medical Spa,” and “Mystique Medical.” (Mystique.) The primary place of business for Mystique
19 was 7161 N. Howard Street, Fresno, CA, 93720. Mystique has never been incorporated with the
20 California Secretary of State.

21 10. On or about August 4, 2009, at the Annual Meeting of the Board of Directors of
22 FHMC, there was an agreement to add 20% to the cost of staff products regarding Mystique.

23 11. On or about September 15, 2012, at the Annual Meeting of the Board of Directors of
24 FHMC, Respondent was named as the permanent Medical Director of FHMC.

25
26 ¹ To protect the privacy of all patients involved, patient names have not been included in this
27 pleading. Respondent is aware of the identity of the patients referred to herein.

28 ² FHMC has never been issued a Fictitious Name Permit by the Board.

1 12. On or about September 15, 2014, an undercover investigator for the Division of
2 Investigations, R.H. (Investigator R.H.), called Mystique to schedule a Botox consultation.
3 Investigator R.H. spoke with Ms. K, who identified herself as the manager. During that phone
4 conversation, Ms. K explained that FHMC was linked to Mystique and that Respondent was
5 present every hour. FHMC and Mystique are located at 7161 N. Howard Street, Fresno, CA
6 93720 in different suites directly across the hall from each other.

7 13. On or about November 14, 2014, investigators from the Division of Investigation
8 served a search warrant on Mystique. During the execution of the search warrant, patient records
9 and personnel documents were reviewed, witnesses were interviewed, and various pieces of
10 evidence were booked. Respondent did not give a statement during the search warrant.

11 14. On or about November 14, 2014, Ms. K was interviewed by an investigator from the
12 Division of Investigations. During that interview, Ms. K explained that Mystique is owned by
13 FHMC. She further explained that Respondent is made aware of any patients with contra-
14 indications for medication provided at Mystique.

15 15. **PATIENT A:** On or about September 14, 2011, through on or about November 14,
16 2014, Patient A received multiple treatments from nurses at Mystique, including but not limited
17 to Botox injections. Patient A was never seen by a physician, physician assistant, or nurse
18 practitioner at any of these appointments, with the exception of November 5, 2013, when Nurse
19 Practitioner S.T. completed a "Skin Care Standing Order," authorizing continued treatment.

20 16. On or about November 26, 2014, Patient A appeared for an appointment at Mystique
21 for Botox treatment. She was seen for the first time by Respondent, who failed to perform an
22 appropriate examination of Patient A prior to her receiving Botox treatment performed by a nurse.

23 17. **PATIENT B:** On or about April 11, 2014, through on or about September 19, 2014,
24 Patient B received multiple laser hair removal treatments from nurses at Mystique. Patient B was
25 never seen by a physician, physician assistant, or nurse practitioner at any of these appointments
26 prior to receiving treatment.

27 18. On or about December 12, 2014, Patient B appeared for an appointment at Mystique
28 for Laser Hair Removal. She was seen for the first time by Respondent, who failed to perform an

1 appropriate examination of Patient B prior to her receiving Laser Hair Removal treatment
2 performed by a nurse.

3 19. Respondent's failure to perform prior appropriate examinations of Patient A and B,
4 before receiving Botox injections and laser hair removal treatment performed by nurses,
5 constitutes repeated acts of negligence.

6 **DISCIPLINARY CONSIDERATIONS**


7 20. To determine the degree of discipline, if any, to be imposed on Respondent Mark
8 Lawrence Nazarian, M.D., Complainant alleges that on or about March 29, 2010, in a prior
9 disciplinary action entitled, *In the Matter of the Accusation Against Mark Lawrence Nazarian,*
10 *M.D.*, before the Medical Board of California, Case No. 10-2007-181465, Respondent's license
11 was publicly reprimanded in connection with his care and treatment of one patient, as set forth in
12 Accusation No. 10-2007-181465. That decision is now final and is incorporated by reference as
13 if fully set forth herein.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Medical Board of California issue a decision:

- 17 1. Revoking or suspending Physician's and Surgeon's Certificate No. G63835, issued to
18 Respondent Mark Lawrence Nazarian, M.D.;
- 19 2. Revoking, suspending or denying approval of Respondent Mark Lawrence Nazarian,
20 M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 21 3. Ordering Respondent Mark Lawrence Nazarian, M.D., if placed on probation, to pay
22 the Board the costs of probation monitoring; and
- 23 4. Taking such other and further action as deemed necessary and proper.

24
25 DATED: June 4, 2019

26 
27 KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
28 Complainant

FR2018300043